

The Institutional Controls Program

Background and Early Considerations

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Early Considerations: The Bunker Hill Superfund site appeared on the National Priority List in 1983. At that time, it was considered to be one of the largest and most complex sites in the country. That is still true today. The twenty-one square mile site included a primary lead smelter, an electrolytic zinc plant, four incorporated cities, Shoshone County government, numerous small-unincorporated communities, and approximately 6,000 people.

Early discussions associated with mass relocation were met with a similar response to that which was noted in 1973 and 1974. Except for those relocations that occurred in Deadwood Gulch, Smelter Heights and Silver King, people did not want to leave their homes. A depressed real estate market, concerns with finding new employment, and leaving family and friends were the most often stated reasons for resisting relocation. Local elected officials were also concerned about local government's ability to continue providing services if a large amount of property was transferred from the tax roles to government ownership.

Total removal was confounded by the hundreds of privately held residential and commercial properties that were involved. With that in mind and considering that for much of the site contamination was identified to depth, it soon became apparent that total removal of all contamination was not possible. Removal to depth would also have resulted in major disruptions in service associated with natural gas, phones, television, domestic water, storm water run off, and sewage disposal. Streets, sidewalks, and driveways also would have been affected as well as those homes built without the benefit of a concrete foundation.



Program Development: Development of the Institutional Controls Program (ICP) was a very long and public process. Realizing that total removal would not be possible, the first mention of institutional controls occurred during a June 18, 1987, Task Force meeting. Additional sessions addressing the need for an ICP and the types of controls that may be needed were on going until the program was adopted by the Panhandle Health District (PHD).

A series of meetings were held with elected officials representing the Cities of Kellogg, Wardner, Smelterville and Pinehurst, and Shoshone

County to solicit input and direction. As program needs were identified, a professional land planner and an attorney who specialized in public administration were engaged to assist. A review of program management options was conducted to identify how best to proceed. A key to successful application of a site wide ICP was to develop a method of governance that would survive the completion of the remedial phase of the project, and produce a lasting result regardless of changes in political circumstances or other uncertainties. The federal government, the State of Idaho, Shoshone County, those cities included within site boundaries, and the PHD were all evaluated for their ability to administer the program. It was recommended that the four cities and Shoshone County provide assistance via already established land use, building and construction permitting procedures, and that PHD administer the effort with permitting, inspection, and records maintenance. PHD's ability to enact regulations that crossed jurisdictional boundaries, and the fact that their existing mission was health based were also considered to be a benefit to the ICP.

In compliance with the Idaho Administrative Procedures Act, the PHD adopted the ICP as part of its Environmental Health Code in February 1995.



Program Components: The ICP is a locally enforced set of regulations designed to ensure the integrity of clean soil and other protective barriers placed over contaminants left in place throughout the Bunker Hill Superfund site.

The program includes educational activities, permitting and inspection procedures, monitoring and health surveillance programs, and records maintenance. A mechanism has also been developed to provide perpetual funding for program activities.

PHD's Environmental Health Code provides the ICP with statutory authority to enforce program requirements. Violation of any provision of the rule is considered to be a misdemeanor and upon conviction shall be punishable by a fine not to exceed \$300.00 and/or imprisonment in the county jail for a term not to exceed six months.

In addition, PHD has the authority to revoke a permit or to issue a stop work order for noncompliance. At such time, PHD may take the steps necessary to eliminate any danger from contamination at the owner's expense.

The ICP applies to all activities involving excavation, building, development, construction, building renovation, and/or grading within the Bunker Hill Superfund site. It includes work conducted on building interiors involving ceilings, attics, insulation, basements or crawl spaces that results in contaminated soil or dust being accessed.

All excavation and grading projects, and certain interior remodeling efforts require an approved permit from the PHD. An approved work permit must be obtained from the PHD prior to obtaining a building permit

from the cities or county.

For projects that involve less than one cubic yard of material, a Record of Compliance is available. To encourage participation, PHD will provide containers to collect contaminated soils for disposal, and provide up to 1 cubic yard of clean replacement material. Homeowner access to the disposal site can also be arranged.

Assistance to homeowners is also available for building renovation/interior projects. The PHD may make respirators, coveralls, plastic sheeting, and vacuums available to homeowners upon request.

The PHD maintains a public disposal site for contaminated soil, renovation and building demolition waste, and carpets.

To help ensure program compliance, any contractor performing excavation or grading projects, building renovation, transportation or disposal of contaminants which are likely to expose the contractor, workers, or others to contaminants, must be licensed by the PHD. It is unlawful for a contractor to work on a project requiring an ICP permit without a current contractors license. A contractor license is not required of an owner working on his or her property.

Contractor licensing classes are held twice each week, and are available on demand should the need arise. A written test must be passed in order to obtain a license. The license must be renewed each year.

To help insure that program requirements are met, the ICP has been integrated into a variety of existing local programs. These include city and county building department's land use and subdivision permitting processes. Permits required by these entities are not issued without ICP involvement and approval.

In addition, the PHD participates in the Shoshone County One-Call system. All individuals who do excavation or grading are required to call in to arrange for the location of all underground utilities. This program is mandatory. All work orders processed by the one-call program are faxed immediately to all utility companies and the PHD. Our participation in the one-call program allows for timely notification of those same projects requiring an ICP permit. By involving other permitting authorities, we are able to benefit from the redundancy of permits required by other entities.

The ICP provides a full time inspector available for permit issuance, contractor licensing, health and safety awareness, community education and sample assistance to identify areas of concern. This same individual collects contaminated soil, provides clean soil or gravel for small projects, and maintains the public disposal site for contaminated soil and/or building materials.

All work permits, records of compliance, and contractor licenses are maintained by the PHD. The ICP establishes and maintains a record of all construction activities by property. The information is available to assist with land transactions and/or construction projects site wide.

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Concerns and Controls: Throughout the ICP development process, a variety of concerns were identified. Issues with long term management and success associated with dirt right-of-ways, hillsides (especially those abutting private property), house dust, and flooding were questioned.

To address those concerns, a number of activities have been ongoing. Right-of-ways have been sampled to address re-contamination rates, house dust is sampled by two methods to evaluate progress, and hillsides adjacent to private property have been evaluated. Flooding remains a concern.

Quarterly meetings are held amongst project participants to discuss program issues and concerns.

The five year review process, required as part of Superfund, also addresses program management, and successes and failures.



Program Chronology: The following is an abbreviated listing of activities associated with developing the ICP:

June 17, 1987: Elected official meetings with cities of Kellogg, Smelterville, Wardner, Pinehurst and Shoshone County to discuss the use of institutional controls

June 18, 1987: Task Force meeting, discussed the use of institutional controls

July 6, 1987: Meeting with Idaho State Representatives to discuss project issues including institutional controls

August 13, 1987: Task Force meeting, reviewed state work plan including institutional controls

August 19, 1987: Workshop with local elected officials to discuss institutional controls

August 21, 1987: Workshop with the Bunker Hill Superfund Task Force to discuss the States work plan for the Populated Areas

October 19, 1988: Task Force meeting, institutional controls were discussed

March 31, 1989: Meeting with Task Force, included discussion about institutional controls

May 16, 1989: Meeting with local elected officials regarding institutional controls

June 14, 1990: Meeting with Shoshone County Board of Realtors - discussed institutional controls

June 14, 1990: Institutional Controls Program workshop with local elected officials

June 28, 1990: Letter to contractors, cities, county etc. regarding institutional controls

August 22, 1990: Meeting with Idaho State Board of Health - discussed the use of institutional controls

September 14, 1990: Site tour and presentation for Western Assoc. of Legislative Fiscal Officers (including Idaho) discussed institutional controls

September 26, 1990: Workshop with local elected officials regarding institutional controls

October 18, 1990: Risk Assessment Data Evaluation Report - notes institutional controls

January 25, 1991: Draft: Evaluation of Institutional Controls For the Populated Areas of the Bunker Hill Superfund Site

February 12, 1991: Letter to local elected officials transmitting the January Draft Evaluation of Institutional Controls for the Populated Areas of the Bunker Hill Superfund Site

February 20, 1991: Meeting with local elected officials to discuss the ICP

February 21, 1991: Task Force meeting, discussed ICP

March 6, 1991: Meeting with representatives of the City of Kellogg regarding the ICP

March 12, 1991: Meeting with Shoshone County Board of Realtors to discuss the ICP

March 14, 1991: Meeting with representatives of the City of Wardner regarding the ICP

March 14, 1991: Meeting with representatives of the City of Pinehurst regarding the ICP

March 15, 1991: Contact with local utility companies requesting comments on the ICP (included 1/25/91 draft program evaluation)

March 18, 1991: Meeting with representatives of the City of Smelterville regarding the ICP

March 26, 1991: Meeting with Kellogg Kiwanis Club - provided ICP presentation

March 28, 1991: Meeting with Kellogg Chamber of Commerce - provided ICP presentation

May 7, 1991: Meeting with Shoshone County Commissioners to discuss the ICP

May 16, 1991: Meeting with Task Force to discuss the ICP

May 21, 1991: Meeting with local elected officials to discuss the ICP

May 22, 1991: Meeting with local elected officials and mining companies to discuss the ICP

May 23, 1991: Public meeting to take comments on the Proposed Plan for the Populated Areas

May 23, 1991: Task Force meeting - discussed Proposed Plan and ICP

April 29 - May 31, 1991: Public comment period on the Proposed Plan for Clean up of the Residential Soils Within the Populated Areas of the Bunker Hill Superfund Site

June 5, 1991: Meeting with Washington Water Power regarding ICP

August 1991: Record of Decision: Populated Areas - noted use of

institutional controls

October 2, 1991: Meeting with Central Shoshone Water District - regarding the ICP

October 29, 1991: Meeting with Panhandle PHD Board of Health - discussed the ICP

November 12, 1991: Meeting with Shoshone County Board of Realtors - discussed the ICP

November 22, 1991: Letters to local elected officials regarding ICP

December 1991: Letters from local government regarding the ICP

December 10, 1991: Site tour for Senator Larry Craig's staff - discussed the ICP

May 27, 1992: Meeting with the Task Force and local elected officials to discuss the ICP

June 1992: Environmental Health Code regarding the ICP sent to mining companies

December 12, 1992: Luncheon meeting with local legislators and staff - discussed the ICP

Mid 1992 - 1994: Work continued on program elements

September 19, 1994: Public hearing on the draft temporary rules instituting the ICP

February 21, 1995: PHD adoption of the ICP